

## HUMAN SERVICES

### DIVISION OF MENTAL HEALTH SERVICES

Advance Directives for Mental Health Care Standards

Proposed New Rules: N.J.A.C. 10:32

Proposed Amendments: N.J.A.C. 10:31-2.3;. 10:37-5.59, 6.42, 6.74,  
6.84, and 6.99

Authorized By: Kevin M. Ryan, Commissioner, Department of Human Services

Authority: N.J.S.A. 30:4-177.59, C. 30:9A-10

Calendar Reference: See Summary below for explanation of exception to  
calendar requirement.

Proposal Number: PRN 2006-270

Submit written comments by November 4, 2006 to:

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The agency proposal follows:

#### Summary

The Department of Human Services (Department or DHS), through the Division of Mental Health Services (Division or DMHS), is proposing new rules (N.J.A.C. 10:32) and amendments to existing rules (N.J.A.C. 10:31-2.3 and 10:37-5.59, 6.42, 6.74, 6.84, and 6.99), to implement the "Advance Directives for Mental Health Care Act," P.L. 2005, c. 233 (the Act), enacted on September 22, 2005, with an effective date of March 21, 2006. This law authorizes the Department of Human Services ,in some cases in consultation with the Department of Health and Senior Services, to create a system in the State psychiatric

hospitals and acute hospital-based psychiatric units that will encourage the use of advance directives for mental health care, assure that they are executed, recorded, and invoked appropriately, and further requires DHS to establish a voluntary registry that will be available to persons in New Jersey who execute such directives.

Although other states have authorized the use of advance directives, and advocacy groups that operate nationally and in this State have encouraged their use, and although New Jersey has, for over 10 years, authorized the use of health care directives, which may include mental health care, the current authorizing legislation gives the first clear direction to the mental health care community about how to implement such directives. The legislation, and these rules, are intended to make the standards for implementation universal in New Jersey and useful to both consumers of mental health services and service providers who must abide by the terms of such directives. The rules are being proposed after consultation with the Commissioner of Health and Senior Services.

### Summary of Proposed New Rules

The new rules proposed as chapter 32 are summarized as follows:

#### Subchapter 1. Scope and Purpose

Proposed N.J.A.C. 10:32-1.1 outlines the scope of the new rules, which would apply to all State psychiatric hospitals and the Division of Mental Health Services. Proposed N.J.A.C. 10:32-1.2 describes the purpose of the new rules, which is to implement the New Jersey Advance Directives for Mental Health Care Act in the State psychiatric hospitals.

Proposed N.J.A.C. 10:32-1.3 defines terms used in these rules.

Proposed N.J.A.C. 10:32-1.4 requires quantitative and narrative reporting by the psychiatric hospitals to the Department of Human Services about the implementation of advance directives in each hospital.

Proposed N.J.A.C. 10:32-1.5 would require each State psychiatric facility to develop policies and procedures to inform current patients of the availability of advance directives for mental health, assist them in using such directives to express their future treatment desires, inform them of the availability of the state's voluntary registry. The rule further requires each facility to develop policies that would establish appropriate procedures for staff to implement the Act and inform staff about their responsibilities under the Act.

Proposed N.J.A.C. 10:32-1.6 requires reporting of interference by psychiatric hospital staff with a consumer's rights under the Advance Directives for Mental Health Care Act.

#### Subchapter 2. Registry of Mental Health Care Directives

Proposed N.J.A.C. 10:32-2.1 establishes procedures and responsibility for the creation and maintenance of a registry of mental health care directives. The rule requires that the Division distribute a form for registration, and that the registry maintain information submitted voluntarily by consumers in compliance with applicable confidentiality laws.

Proposed N.J.A.C. 10:32-2.2 establishes the process to access the registry by declarants, their mental health care representatives, licensed independent practitioners, and certified mental health screeners.

Appendix A is a form for a mental health advance directive that may be used by potential consumers of mental health services.

Appendix B is the form that must be completed by a declarant in order to register a document with the DMHS registry.

### Summary of Proposed Amendments to N.J.A.C. 10:31 and 10:37

The Department is proposing to amend N.J.A.C. 10:31-2.3, Screening process and procedures, to require that screeners consult the DMHS Registry, the consumer, and any available family or other supporters with whom the screeners have authorization to speak to determine whether an advance directive exists, and to comply with any directive that is discovered in that process as required.

The Department is proposing to amend N.J.A.C. 10:37, Community Mental Health Services Act, to require that licensed mental health provider agencies develop procedures to assure that their clients are offered the opportunity to execute advance directives for mental health care, to assure that staff consult the client and the DMHS Registry to determine whether an advance directive exists, and to assist the client in making any changes needed during the development and refinement of the treatment plan.

N.J.A.C 10:37-5.59 is amended to add that client involvement, as required under the rules, includes being given the opportunity to develop, modify, execute, and register an advance directive for mental health care.

A proposed amendment to 10:37-6.42 would require provider agencies to adopt policies and practices that are necessary to provide appropriate information and materials about advance directives to consumers and their families, and to assist consumers in creating, modifying, or registering directives, and to require that the Individual Service Plan include discussions of advance directives for mental health care.

Proposed amendments to 10:37-6.74 delete archaic references to an Appendix and a

Division Service Directory that no longer exist, add the requirement that the client record include a copy of any advance directive, the location of copies, and if there is none documentation of the efforts made by the agency to assist the client in creating an advance directive. Subsection 7 is amended to add mental health care representatives to those who can consent to treatment, evaluation, or research where the advance directive permits, and eliminates the ability of a family member to consent because Chapter 37 now only applies to adult clients.

N.J.A.C 10:37-6.84 is amended to add an annual reporting requirement of activities related to usage of advance directives for licensed agencies, and addresses situations with transfers of patients.

N.J.A.C. 10:37-6.99 is amended to require that each written plan or orientation for new staff include information about the staff's rights and responsibilities under the Act.

#### Social Impact

The Advance Directives for Mental Health Care Act requires all mental health care providers to develop internal policies and procedures to assist consumers of mental health services in executing a directive if they wish to do so and to implement those directives should a substitute decision-maker or instruction be necessary to treat the client. In addition, the Act requires that psychiatric facilities operated by the Department of Human Services submit data to show that they have complied with the law, and in what the Department believes to be a necessary step to full implementation, proposes some limited reporting by licensed mental health providers as well.

The Department anticipates that the social benefit derived from these proposed amendments and new rules implementing the Advance Directives for Mental Health Care Act will be very positive. The proposed amendments and new rules will empower consumers to use their unique knowledge of their own illness and past response to treatment to participate in treatment decisions even when the illness makes direct current participation impossible, and provides for a registry to assist providers in accessing the wishes of the consumer. The system created to promote the use of advance directives for mental health care should further the Division of Mental Health Services' goal of transforming the current system of care toward a culture that promotes wellness and recovery for consumers of its services.

#### Economic Impact

Existing rules already require reporting of a number of events, including incidents, census, and performance toward various fiscal and treatment goals, by the psychiatric hospitals and licensed mental health care providers. The proposed new rules and amendments would impose new requirements, mandated either explicitly or implicitly by the Advance Directives for Mental Health Care Act, such as informing consumers of their rights to execute a directive at various critical points in treatment, creating a dispute resolution mechanism to resolve issues of capacity and the medical soundness of treatments proposed in a directive or chosen by a mental health care representative, and training for all treatment staff in the use of the registry and the implementation of advance directives for mental health care.

The Department believes that the proposed new rules and amendments will not impose an economic burden that cannot be met with the funds provided to them by the

Division and other sources. The promulgation of these standards is not intended or expected to impact the amount of Division funding available to provide these services in the future. Costs incurred will be minor and will include the expansion of current reporting requirements to include data about implementation of the law and some expansion of existing training of staff about their responsibilities.

The proposed new rules and amendments will have a positive economic impact on consumers and the public, because they will enable more individualized, efficient treatment planning and implementation, which will reduce the number of more expensive and personally restrictive psychiatric hospitalizations.

#### Federal Standards Statement

No Federal standards are implicated in the implementation of the Advance Directives for Mental Health Care Act.

#### Jobs Impact

The Department does not anticipate that the proposed amendments and new rules would result in the generation or loss of jobs within the State. Current law requires that all health care facilities, including psychiatric hospitals, offer each patient the opportunity to complete or decline to execute an advance directive for health care. The addition of one more kind of advance directive should not create a need for new staff.

#### Agriculture Industry Impact

The proposed amendments and new rules will have no impact on agriculture in the State of New Jersey.

### Regulatory Flexibility Analysis

The proposed new rules and amendments would apply to licensed mental health programs and some facilities licensed by the Department of Health and Senior Services, a number of which may be considered small businesses, as that term is defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The Department has determined that the proposed new rules and amendments would apply to approximately 150 licensed facilities Statewide, in addition to the State psychiatric hospitals operated by the Department of Human Services. The Department is unable determine exactly how many of these facilities would constitute small businesses, but anticipates that a significant percentage of the licensed facilities would qualify.

The proposed new rules would impose some additional reporting, recordkeeping and compliance requirements beyond the current level of reporting required by other rules, as set forth below. These additional requirements might include the creation of a dispute resolution process, some training for staff, and the requirement to check the registry for each admitted client and to assist clients in preparation of an advance directive for mental health care. The proposed new rules would establish requirements relating to the reporting and recordkeeping that should involve minimal added administrative expenses, because most of the implementation activity will occur at the state level.

The Department anticipates that all facilities, not just small businesses, would incur some initial cost to engage in compliance activities as discussed in the Summary above, to



meet the requirements of the rules, to implement the use of advance directives for mental health care, and to train staff on how to assist clients in completing the forms and how to invoke a directive. The Department believes the requirements and objectives of the Advance Directives for Mental Health Care Act are best served by the uniform application of the proposed new rules and amendments, insofar as they require agency staff to offer and abide by directives executed under the Act. Therefore, the Department is not proposing to offer different standards for compliance for facilities that may qualify as small businesses. Because there are already requirements that the client participate in treatment, the reporting requirements for community agencies are minimal, and complaints about services are in the first instance handled at the agency level so a dispute resolution mechanism should already exist, the Department does not anticipate that compliance with the proposed new rules would require the hiring of additional professional staff or services.

### Smart Growth Impact

The proposed amendments and new rules will have no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the proposed amendments and new rules follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

## CHAPTER 31

### SCREENING OUTREACH PROGRAM

### 10:31-2.3 Screening process and procedures

(a) The screening process shall involve a thorough assessment of the client and his or her current situation to determine the meaning and implication of the presenting problem(s) and the nature and extent of efforts which have already been made. The screening center staff shall make every effort to gather information from the client's family and significant others to determine what the clinical needs of the client are and to determine what services are in the best interest of the client. The screening center staff shall consult with each adult client, significant others as permitted by law, and the DMHS Registry established pursuant to N.J.A.C 10:32-2.1, to determine whether the client has executed an advance directive, has a guardian, or has executed a durable power of attorney, and shall take no action that conflicts with those documents insofar as they exist and compliance is required by law. The screening center staff, in conjunction with affiliated mental health care providers, shall advocate for services to meet client needs and encourage the system to respond flexibly. Throughout the screening process, medication shall not be given to clients in non-emergency situations without their consent.

(b)-(g) (No change.)

## CHAPTER 32

## ADVANCE DIRECTIVES FOR MENTAL HEALTH CARE

### Subchapter 1. Scope and Purpose

#### 10:32-1.1 Scope

This chapter shall apply to psychiatric hospitals listed in N.J.S.A. 30:1-7 and to the Division of Mental Health Services in the Department of Human Services.

#### 10:32-1.2 Purpose

(a) The purpose of these rules is to standardize the use of advance directives for mental health care and to foster the self-directed recovery of persons who have mental illnesses.

#### 10:32-1.3 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Adult" means an individual 18 years of age or older.

"Advance directive for mental health care" or "advance directive" means a writing executed in accordance with the requirements of N.J.S.A 26:2H-107. An "advance directive" may include a proxy directive or an instruction directive, or both.

"Decision-making capacity" means a patient's ability to understand and appreciate the nature and consequences of mental health care decisions, including the benefits and risks of each, and alternatives to any proposed mental health care, and to reach an informed decision. A patient's decision-making capacity is evaluated relative to the demands of a particular mental health care decision.

"Declarant" means a competent adult who executes an advance directive for mental health care.

“Department” means the Department of Human Services.

“Division” or “DMHS” means the Division of Mental Health Services in the Department of Human Services.

“DMHS registry” means the registry for advance directives established by the Division of Mental Health Services pursuant to section 17 of P.L. 2005, c. 233 (N.J.S.A.30:4-177.59).

“Domestic partner” means a domestic partner as defined in section 3 of P.L. 2003, c. 246 (N.J.S.A.26:8A-3).

“Inpatient” means a person who has been admitted for treatment to a State psychiatric facility listed in N.J.S.A 30:1-7.

“Instruction directive” means a writing which provides instructions and direction regarding the declarant's wishes for mental health care in the event that the declarant subsequently lacks decision-making capacity.

“Licensed independent practitioner” means an individual permitted by law to provide mental health care services without direct supervision, within the scope of the individual's license to practice in the State of New Jersey pursuant to N.J.S.A 45:1-1 et seq., and may include physicians, advanced practice nurses, licensed clinical social workers, and psychologists.

“Mental health care decision” means a decision to accept or refuse any treatment, service or procedure used to diagnose, treat or care for a patient's mental condition. Mental health care decision also means a decision to accept or refuse the services of a particular mental

health care professional or psychiatric facility, including a decision to accept or to refuse a transfer of care.

"Mental health care professional" means an individual licensed or certified by this State to provide or administer mental health care in the ordinary course of business or practice of a profession.

"Mental health care representative" means the individual designated by a declarant pursuant to the proxy directive part of an advance directive for mental health care for the purpose of making mental health care decisions on the declarant's behalf, and includes an individual designated as an alternate mental health care representative who is acting as the declarant's mental health care representative in accordance with the terms and order of priority stated in an advance directive for mental health care.

"Patient" means an individual who is under the care of a mental health care professional.

"Proxy directive" means a writing which designates a mental health care representative in the event that the declarant subsequently lacks decision-making capacity.

"Responsible mental health care professional" means a licensed independent professional who is selected by, or assigned to, the patient and has primary responsibility for the care and treatment of the patient. For purposes of determining whether a patient who has executed an advance directive for mental health care has or does not have the capacity to make a particular mental health treatment decision, a physician, advance practice nurse, or psychologist on the declarant's treatment team may function as a responsible mental health

care professional, but for all other purposes, each member of the state hospital treatment team assigned to the declarant may be considered a “responsible mental health care professional.”

#### 10:32-1.4 Annual reporting

(a) The Chief Executive Officer of each psychiatric facility listed in N.J.S.A. 30:7-1 shall submit a report to the Commissioner of Human Services, through the Division of Mental Health Services on September 1, 2007 and on September 1 in every year thereafter about that facility’s implementation of the New Jersey Mental Health Advance Directives Act. The report shall not include patient identifiers, but shall include:

1. The percentage of patients admitted during the preceding year who had executed an advance directive before admission;
2. The number of patients who executed or modified an advance directive for mental health care while a patient at the facility;
3. The number of advance directives that were challenged by the treating professionals at the facility, and in each case why the advance directive was challenged, whether and by whom the overriding of the advance directive was approved, and whether the patient appealed the override;
4. The number of staff trained to assist patients with advance directives (initial and followup training);
5. The number of sessions held by the administration for professional staff to explain their legal obligations under the Act and these rules;
- 6 The number of persons who are discharged with an advance directive; and

7. A narrative that describes any systemic problems encountered during the year in the implementation of the act, problems in accessing the registry, complaints from patients or families, or other issues.

10:32-1.5 Policies at psychiatric facilities

(a) Every psychiatric facility listed at NJSA 30:1-7 shall develop policies and procedures that require appropriate clinical staff to :

1. inform current patients of

i. The availability of advance directives for mental health, and

ii. The availability of the state's voluntary registry;

2. Assist patients in executing advance directives for mental health;

3. Make routine inquiry of each patient admitted and the referring or committing physician or screening service, at the time of admission or at such other times as are appropriate under the circumstances, concerning the existence and location of an advance directive for mental health care;

4. Provide appropriate informational materials concerning advance directives for mental health care, including standard forms approved by the Division of Mental Health Services located at Chapter Appendix A, incorporated here by reference, and information about the DMHS Registry established pursuant to N.J.A.C. 10:32-2.1, to all interested patients and their families and mental health care representatives;

5. Assist patients who express an interest in discussing and executing an advance directive for mental health care in doing so, as well as to encourage and enable patients to periodically

review their advance directives for mental health care as needed and to consult with an advocate if they wish to do so;

6. Inform mental health care professionals of their rights and responsibilities under P.L. 2005, c. 233 (N.J.S.A. 26:2H-102 et seq.) and these rules, including the responsibility to defer to a patient's mental health care representative or advance directive unless doing so would:

i. Violate an accepted standard of mental health care or treatment under the circumstances of the patient's mental health condition, included past responses to requested or proposed treatments;

ii. Require the use of a form of care or treatment that is not available to the mental health care professional responsible for the provision of mental health services to the patient;

iii. Violate a court order or provision of statutory law; or

iv. Endanger the life or health of the patient or another person;

7. Inform staff that a mental health care professional who intentionally fails to act in accordance with the requirements of the Act is subject to discipline for professional misconduct pursuant to section 8 of P.L. 1978, c. 73 (N.J.S.A. 45:1-21);

8. Provide training for staff that includes a forum for discussion and consultation regarding the requirements of P.L. 2005, c. 233 (N.J.S.A. 26:2H-102 et seq.) and these rules for staff and clients, as well as a discussion of the criminal penalties that can be assessed for noncompliance with the Act;



9. Establish procedures that provide for staff consultation with an institutional ethics committee; designate a person to resolve disputes; and provide for referrals to the Attorney General in order to seek resolution by a court of competent jurisdiction in the event of disagreement among the patient, mental health care representative and responsible mental health care professional concerning the patient's decision-making capacity or the appropriate interpretation and application of the provisions of an advance directive for mental health care to the patient's course of treatment;

10. Prohibit any employee from acting as a mental health care representative for a current or former client of the hospital unless that designation is approved by the facility chief executive officer; and

11. Establish procedures for gathering data required by N.J.A.C. 10:32-1.4.

10:32-1.6 Reporting of interference with patient rights to have or invoke an advance directive

(a) A psychiatric facility shall report to the Department, by a written report to the Assistant Commissioner for Mental Health Services, every incident in which an employee has materially failed to comply with this section or the policies required by N.J.A.C. 10:32-1.5.

1. Notification of the Assistant Commissioner shall occur no later than five business days after the facility substantiates the event and shall be made in a form and manner prescribed by the Division.

Subchapter 2. Registry of Mental Health Care Directives

10:32-2.1 Creation and maintenance of a registry of mental health care directives

(a) The Division shall create an internet-based registry that contains information about the advance directives for mental health care of individuals who choose to submit such information.

(b) The information shall be submitted either electronically or on paper on a registry form developed by the Division, Chapter Appendix B, incorporated herein by reference, that shall be available to all licensed mental health programs and to the public through the Department or Division website.

(c) The registry form (Chapter Appendix B) shall be an addendum to the standard advance directives for mental health treatment form (Chapter Appendix A) published by the Division of Mental Health Services, but shall clearly be an optional portion of the form, and shall be separately witnessed or executed electronically through a secure website with appropriate safeguards to prevent fraudulent access or registration.

(d) Only DMHS staff, declarants, licensed independent practitioners, and mental health screeners certified by the Division of Mental Health Services pursuant to N.J.A.C. 10:31-3.3, and employed by a designated screening service shall be authorized to access information on the registry. Information on the registry shall only be accessed by persons other than the declarant for purposes of maintenance of the registry or of ascertaining the wishes of a declarant who has registered his or her advance directive, and shall be treated as confidential protected health information.

#### 10:32-2.2 Access to the registry

(a) An authorized person may access the registry through the internet (at <http://www.state.nj.us/humanservices/dmhs/index.html>) 24 hours a day, seven days a week,

or on the telephone at (609) 777-0702 during weekday business hours by providing a password issued by the Division of Mental Health Services pursuant to (b) or (c) below.

(b) The Division of Mental Health Services shall provide a user name and password to any licensed independent practitioner or a person who is certified as a mental health screener pursuant to N.J.A.C. 10:31-3.3 upon the request of that person and receipt of proof of the license or certification.

1. A person who obtains a user name and password shall keep that user name and password confidential and shall use it to access information only about a person to whom they are a responsible mental health professional as defined in these rules and who has provided a name, social security number, or other unique identifier to the licensed or certified provider for purposes of accessing the advance directive or for purposes of treatment or payment. The purposeful misuse or disclosure of a password, or failure to report the accidental disclosure of a password, shall be cause to revoke that person's privilege to access the database.

(c) The Division of Mental Health Services shall provide each registered declarant with a user name and password that shall limit their access to their own registered directive. The consumer may share that user name and password with a mental health care representative. If the representative does not have the password, the Division of Mental Health Services will provide that user name and password to a person who presents either satisfactory proof that they are the person named in an advance directive, or a court order naming the person as the guardian of the person who executed an advance directive.

#### 10:37-5.59 Service approaches

(a) – (b) (No change.)

(c) Client involvement:

1. Each client shall be involved in determining service goals, modalities of treatment and timetables, to the extent that his or her condition permits. Participation should be documented by having the client's signature on the plan. (See N.J.A.C. 10:37-6, Article VIII.) Client involvement shall include the development, modification, execution, and registration of an advance directive for mental health treatment if the consumer, after receiving complete information about such directives, wishes to designate either a mental health representative or to execute an instruction directive.

2. – 3. (No change.)

(d) (No change.)

#### 10:37-6.42 Scope and purpose

(a) Scope:

1. – 3. (No change.)

4. A provider agency shall adopt such policies and practices as are necessary to provide appropriate informational materials concerning advance directives for mental health care to all interested consumers and their families and mental health care representatives, and to

assist consumers interested in discussing and executing an advance directive for mental health care.

5. Before formulating any ISP, staff shall consult with the client and with the DMHS Registry to establish whether the client has executed an advance directive for mental health care. Any directive of which the provider agency becomes aware shall be considered in formulating the ISP. At the time the ISP is developed, and at any time the ISP is reviewed or modified, the client shall be counseled about the opportunity to execute or modify any such directive based on the current need for care and treatment preferences of the client. Disputes about the implementation of an advance directive shall be subject to the process provided in accordance with the requirements of N.J.A.C. 10:37-4.6.

[4.] 6. (no change in text)

(b) (No change.)

10:37-6.74 Required contents for all records

(a) The [contents of the] client record shall contain the following information:

1. The identifying and other data indicated on the Division's Unified Services Transaction Form for enrolled and terminated clients. [(See Article XIV of this subchapter.)]

2. Comprehensive assessment and evaluation [(see Division's Service Dictionary for detailed description)] of client needs, including level of functioning and a natural support resource inventory for all clients.

3. (No change.)

4. Individual service plan with updated revisions. [(See Article VIII of this subchapter.)]

5. A copy of any advance directive for mental health care executed by the patient, and a note that indicates the whereabouts of any copies of the directive, including whether the advance directive has been registered with DMHS, if known, or if no advance directive has been executed, a note documenting the actions taken by the staff of the agency to provide the client with the opportunity to execute an advance directive.

[5] 6. (No change in text.)

[6] 7. Client and/or [family] mental health care representative consent for [a] service initiation, evaluation, or research as permitted or required by law, and appropriate authorizations for record sharing [,evaluation, and/or research, as necessary].

[7] 8. (No change in text.)

[8] 9. Medications [(see Article X of this subchapter)].

[9] 10. (No change in text.)

[10] 11. Unusual incidents, occurrences [(see Article XIX of this subchapter)] such as:

i. – iv. (No change.)

v. Procedures placing the client at risk or causing pain/harm. [(See Article XIX of this subchapter.)]

Recodify existing 11.-14. as 12.-15. (No change in text.)

10:37-6.84 Designation of responsibility

(a) (No change.)

(b) All agencies licensed by the Department to provide mental health services are required to submit annual reports to the Division regarding their compliance with P.L. 2005, c. 233, the Advance Directives for Mental Health Act.

The annual report shall not include patient identifiers, but shall include:

1. The number of consumers admitted to treatment during the preceding year who had executed an advance directive before admission;

2. The number of consumers who executed or modified an advance directive for mental health care while a client of the provider;

3. The number of advance directives that were invoked by the treating professionals at the facility to treat a consumer;

4. The number of persons who revoked an advance directive during the past year while a client of the agency;

5. The number of consumers who were transferred to another provider for treatment because the provisions of an advance directive permitted or authorized treatment that was not available at the reporting provider agency; and

6. A narrative that describes any systemic problems encountered during the year in the implementation of the act, problems in accessing the registry, complaints from patients or families, or other issues.

(c) In situations in which a transfer of care is necessary, including a transfer for the purpose of effectuating a patient's declarations in an advance directive for mental health care, a provider agency shall, in consultation with the responsible mental health care professional, take all reasonable steps to effect the appropriate, respectful and timely transfer of the client to the care of the appropriate alternative mental health care professional, psychiatric facility, or provider agency, as necessary, and shall assure that the client is not abandoned or treated disrespectfully. In those circumstances, a provider agency shall assure the timely transfer of the client's medical records, including a copy of the client's advance directive for mental health care.

#### 10:37-6.99 Training and staff development

(a) (No change.)

(b) Agencies shall participate in these sessions as requested, and shall also reinforce the Division's sessions at the local level. Each agency shall develop a written plan or orientation for each new staff person which will include, but not be limited to, the following topics:

1. – 4. (No change.)

5. Fire evacuation procedure; [and]

6. Emergency procedures (for example, unusual incidence procedures)[.]; and

7. Staff rights and responsibilities under the Advance Directives for Mental Health Care Act (P.L. 2005, c. 233)



(c) (No change.)

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Date

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Kevin M. Ryan, Commissioner

## Declaration of Mental Health Care Representative

I, \_\_\_\_\_, being a legal adult of sound mind, voluntarily make this declaration for mental health treatment. I want this declaration to be followed if I am incapable, as defined in New Jersey Statutes 26:2H-108. I designate \_\_\_\_\_ as my agent for all matters relating to my mental health care including, without limitation, full power to give or refuse consent to all medical care related to my mental health condition. If my agent is unable or unwilling to serve or continue to serve, I appoint \_\_\_\_\_, as my agent. If both are unable or unwilling to serve or continue to serve, I appoint \_\_\_\_\_, as my agent. I want my agent to make decisions for my mental health care treatment that are consistent with my wishes as expressed in this document or, if not specifically expressed, as are otherwise known to my agent.

If my wishes are unknown to my agent, I want my agent to make decisions regarding my mental health care that are consistent with what my agent in good faith believes to be in my best interests. My agent is also authorized to receive information regarding proposed mental health treatment and to receive, review and consent to disclosure of any medical records relating to that treatment.

I specifically authorize my representative to receive information about my treatment for HIV/AIDS and alcohol and substance abuse diagnosis and treatment if applicable and relevant. \_\_\_\_\_(initial)

This declaration allows me to state my wishes regarding mental health care treatment including medications, admission to and retention in a health care facility for mental health treatment and outpatient services.

(initial one of the following)

\_\_\_\_\_ This designation of a mental health care representative is irrevocable if I have been found under the standards in New Jersey Statutes Annotated 26:2H-108 to lack capacity to directly consent to my care.

\_\_\_\_\_ I can revoke this designation of a mental health care representative at all times.

If you wish to complete an instruction directive, continue on page 2. Otherwise, go to the signature section on page 5.

## Mental Health Instruction Directive

The following are my wishes regarding my mental health care treatment if I become incapable.

### Preferences and Instructions About Physician(s) or other professionals to be Involved in My Treatment

I would like the professional(s) named below to be involved in my treatment decisions:

Contact information: \_\_\_\_\_

Contact information: \_\_\_\_\_

I do not wish to be treated by \_\_\_\_\_ (facility or professional)

### Preferences and Instructions About Other Providers

I am receiving other treatment or care from providers who I feel have an impact on my mental health care. I would like the following treatment provider(s) to be contacted when this directive is effective:

Name \_\_\_\_\_ Contact information \_\_\_\_\_

Name \_\_\_\_\_ Contact information \_\_\_\_\_

### Preferences and Instructions About Medications for Psychiatric Treatment

\_\_\_\_ I consent, and authorize my mental health care representative, if appointed on page 1, to consent, to the administration of the following medications:

\_\_\_\_\_

\_\_\_\_ I do not consent to, and I do not authorize my mental health care representative to consent to, the administration of any of the following medications:

\_\_\_\_\_

\_\_\_\_ I am willing to take the medications excluded above if my only reason for excluding them is the side effects which include: \_\_\_\_\_ and these side effects can be eliminated by dosage adjustment or other means.

- ☐ I am willing to try any other medication the hospital doctor recommends  
☐ I am willing to try any other medications my outpatient doctor recommends  
☐ I am not willing to try any other medications.

### Preferences about voluntary hospitalization and alternatives:

By initialing here, I consent to giving my representative the power to admit me to an inpatient or partial psychiatric hospitalization program for up to \_\_\_\_ days:

\_\_\_\_ (initial if you consent)

I would like the interventions below to be tried before voluntary hospitalization is considered:

☐ Calling someone or having someone call me when needed. (Name: \_\_\_\_\_, telephone number: \_\_\_\_\_)

☐ Staying overnight at a crisis respite (temporary) bed.

☐ Having a mental health care provider come to see me.

☐ Staying overnight with a friend: \_\_\_\_\_

☐ Seeing a mental health care provider for assistance with medications

☐ Other: \_\_\_\_\_

If hospitalization is required, I prefer the following hospital(s):

\_\_\_\_\_

### Preferences about emergency interventions

I would like the interventions below to be tried before use of seclusion or restraint is considered (check all that apply)

☐ "Talk me down" one-on-one

☐ More medication

☐ Time out/privacy

☐ Show of authority/force

☐ Shift my attention to something else

☐ Set firm limits on my behavior

☐ Help me to discuss/vent feelings

☐ Decrease stimulation

☐ Other: \_\_\_\_\_

If it is determined that I am engaging in behavior that requires seclusion, physical restraint, and/or

emergency use of medication, I prefer these interventions in the order I have chosen (choose “1” for first choice, “2” for second choice, and so on)

\_\_\_\_\_ Seclusion

\_\_\_\_\_ Seclusion and physical restraint (combined)

\_\_\_\_\_ Medication by injection

\_\_\_\_\_ Medication in pill or liquid form

In the event that my attending physician decides to use medication in response to an emergency situation after due consideration of my preferences and instructions for emergency treatments stated above, I expect the choice of medication to reflect any preferences and instructions I have expressed in this form. The preferences and instructions I express in this section regarding medication in emergency situations do not constitute consent to use of the medication for nonemergency treatment.

### Preferences and Instructions About Electroconvulsive Therapy (ECT or Shock Therapy)

\_\_\_ I wish my mental health care representative to be able to consent to electroconvulsive therapy in his or her complete discretion.

\_\_\_ I wish my mental health care representative to be able to consent to electroconvulsive therapy if I display the following symptoms:

\_\_\_\_\_

\_\_\_ I do not authorize my representative to consent to electroconvulsive therapy.

### Expiration

This advance directive for mental health care is made pursuant to P.L. 2005, ch 233 of the New Jersey laws and continues in effect for all who may rely on it except to those I have given notice of its revocation pursuant to NJSA 26:2H-106 d. (1). If I do not revoke the directive, it will expire on \_\_\_\_\_, 20\_\_\_. (leave blank if you do not want it to expire)

### Signatures

I have voluntarily completed this advance directive for mental health care.

\_\_\_\_\_ (signature of declarant)

Address of mental health care representative: \_\_\_\_\_

Telephone number of mental health care representative \_\_\_\_\_

Address(es) of alternate mental health care representative(s) \_\_\_\_\_  
\_\_\_\_\_

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Telephone number(s) of alternate mental health care representative(s)

**Affirmation of first witness (required):**

I affirm that the person signing this mental health care advance directive:

1. Is personally known to me.
2. Signed or acknowledged by his or her signature on this declaration in my presence.
3. Appears to be of sound mind and not under duress, fraud or undue influence.
4. Is not related to me by blood, marriage or adoption.
5. Is not a person for whom I directly provide care as a professional.
6. Has not appointed me as an agent to make medical decisions on his or her behalf.

Witnessed by:

\_\_\_\_\_, 20\_\_\_\_  
(signature and date)

**Affirmation of second witness:** (two witnesses are required if the first witness is related to the declarant, entitled to any part of the declarant's estate, or the operator, administrator or employee of a rooming or boarding house or a residential health care facility in which the declarant resides)

I affirm that the person signing this mental health care advance directive:

1. Is personally known to me.
2. Signed or acknowledged by his or her signature on this declaration in my presence.
3. Appears to be of sound mind and not under duress, fraud or undue influence.
4. Is not related to me by blood, marriage or adoption.
5. Is not a person for whom I directly provide care as a professional.
6. Has not appointed me as an agent to make medical decisions on his or her behalf.

Witnessed by:

\_\_\_\_\_, 20\_\_\_\_  
(signature and date)

**Acceptance of appointment as agent:** (optional)

I accept this appointment and agree to serve as agent to make mental health treatment decisions for the principal. I understand that I must act consistently with the wishes of the person I represent, as expressed in this mental health care power of attorney, or if not expressed, as otherwise known by me. If I do not know the principal's wishes, I have a duty to act in what I in good faith believe to be that person's best interests. I understand that this document gives me the authority to make decisions about mental health treatment only while that person has been determined to be incapable as that term is defined in

NJSA 26:2H-109.

\_\_\_\_\_  
signature of primary mental health care representative

\_\_\_\_\_  
printed name of primary mental health care representative

\_\_\_\_\_  
signature of first alternate mental health care representative

\_\_\_\_\_  
printed name of first alternate mental health care representative

\_\_\_\_\_  
signature of second alternate mental health care representative

\_\_\_\_\_  
printed name of second alternate mental health care representative

## Revocation

Complete this section if you wish to revoke this directive completely. You may also revoke or modify the directive by executing a new document. If you do so, you should tell your mental health care representative and replace the old documents in anyone's possession with your new directive. If you revoke this directive, it will no longer have any legal effect on your treatment.

\_\_\_\_\_ I revoke the mental health advance directive I executed on or about \_\_\_\_\_, 20\_\_ in its entirety.

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(date)

## Registration

I hereby submit my mental health advance directive to the Division of Mental Health Services in the New Jersey Department of Human Services to be registered. I choose the following password that will permit access for me and anyone with whom I share it.

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I further understand that a licensed health care provider who is providing me with mental health care may be able to access my directive if needed. No other person will be permitted to see the directive (except as required for administration of the registry) without my permission.

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Signature

Print name: \_\_\_\_\_, contact information for confirmation:

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Witness:

\_\_\_\_\_ (sign) \_\_\_\_\_ (print name)

Dated: \_\_\_\_\_

Send original to: NJDMHS Registry, 50 E. State St, PO Box 727, Trenton, NJ 08625-0727 and attach a copy of your entire mental health care advance directive. You may also submit other documents to be registered that affect your legal ability to consent, such as a health care advance directive, durable power of attorney, temporary or limited guardianship orders, etc., which the registry will accept in its discretion.